

EXHIBIT 1

INTRODUCTION

Respondent Protect Burlingame (“Respondent Committee”) was a general purpose committee which advocated for the passage of two measures on the ballot in Burlingame in the November 3, 2009 election. Respondent Kevin Osborne was, at all times relevant, treasurer of Respondent Committee. Measure H, which increased an occupancy tax on hotel rooms, and Measure I, a proposition to make the position of City Clerk appointive rather than elective, both passed.

Prior to the election, Respondents paid for and sent two mailers supporting Measures H and I. However, these mailers did not accurately identify the sender on the outside of each piece of mail in a mass mailing, in violation of the Political Reform Act (the “Act”).¹

For the purposes of this Stipulation, Respondents’ violation of the Act is stated as follows:

COUNT 1: On or about October 6, 2009, Respondents Protect Burlingame and Kevin Osborne caused to be sent two separate mass mailers supporting Measures H and I in the November 3, 2009, election, which failed to display required sender identification, in violation of Government Code Section 84305, subdivision (a).

SUMMARY OF THE LAW

Sender Identification Requirements

Section 84305, subdivision (a), requires candidates and committees to properly identify themselves when sending a mass mailing. Specifically, the statute provides that no candidate or committee shall send a mass mailing unless the name, street address, and city of the candidate or committee are shown on the outside of each piece of mail in the mass mailing.

Section 82041.5 defines a “mass mailing” as over two hundred substantially similar pieces of mail, but does not include a form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry. Regulation 18435, subdivision (a), clarifies this section, and further defines a mass mailing as over two hundred substantially similar pieces of mail sent in a calendar month. Regulation 18435, subdivision (b), defines the term “sender,” as used in Section 84305, as the candidate or committee who pays for the largest portion of expenditures attributable to the designing, printing or posting of the mailing.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

Liability of Committee Treasurers

Under Section 81004, subdivision (b), Section 84100, and Regulation 18427, subdivision (a), it is the duty of the committee's treasurer to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such funds. A committee's treasurer may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee. (Sections 83116.5 and 91006.)

SUMMARY OF THE FACTS

This case was opened as the result of a complaint that alleged Respondents Protect Burlingame and Kevin Osborne were responsible for sending mass mailers which lacked proper sender identification information. The "Yes on Measure I" mailer lacked any sender identification, and the sender identification on the "Yes on H" said only, "Paid for by Protect Burlingame, FPPC # 80-0317956." However, this number is not a committee identification number issued by the Office of the Secretary of State.

After an investigation, Respondents Protect Burlingame and Kevin Osborne were determined to be the sender of the mailers. Records obtained from the printer establish that Respondents spent a total of \$2,369.18 on the printing two separate mass mailers, advocating the passage of Measures H and I. Approximately 7,000 copies of each mailer were sent to Burlingame residents. Respondents were required to provide the name, street address, and city of the committee on the outside of each piece of mail in a mass mailing. None of the mailers included this information.

By failing to provide sender identification on a mass mailer, Respondents violated Section 84305, subdivision (a), of the Government Code.

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of Five Thousand Dollars (\$5,000).

In determining the appropriate penalty for a particular violation of the Act, the Commission considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, liability under the Act is governed in significant part by the provisions of Section 91001, subdivision (c), which requires the Commission to consider whether or not a violation is inadvertent, negligent or deliberate, and the presence or absence of good faith, in applying remedies and sanctions.

The failure to provide proper sender identification on a mass mailer is a serious violation of the Act, as it deprives the public of important information regarding the sponsor of the mailing.

AGGRAVATING FACTORS

The public harm inherent in campaign reporting violations, where pertinent information is not disclosed, is that the public is deprived of important information such as the amounts expended by the campaign and information about the recipients and reasons for the expenditures.

By not providing the true source of the mailers, Respondents misled the public into thinking the mailers were provided by a third party, other than the candidates up for recall.

MITIGATING FACTORS

Respondent Committee included the name on one of the mailers. Also, Respondents do not have any prior enforcement history, have no prior experience with campaign reporting, and cooperated fully during the investigation with the Enforcement Division staff in this matter.

PENALTY

The typical administrative penalty for this kind of violation has historically been in the middle of the penalty range, depending on the circumstances of the violation. After a review of the mitigating and aggravating factors, the imposition of Two Thousand Five Hundred Dollars (\$2,500) is appropriate.